

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

STACEY L. HEMPHILL,	)	
	)	
Petitioner,	)	
vs.	)	NO. CIV-09-0120-HE
	)	
JUSTIN JONES, DIRECTOR OF ODOC,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner Stacey L. Hemphill, a state prisoner appearing *pro se*, instituted this action pursuant to 28 U.S.C. § 2241 seeking habeas relief. He challenges a disciplinary conviction and the state appellate court's rejection of his appeal. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert E. Bacharach. He has recommended that a motion to dismiss filed by the respondent that addresses the disciplinary conviction be granted on grounds of procedural default and that the petitioner be denied relief on his other claims challenging the Oklahoma Court of Criminal Appeal's rejection of his appeal.

The petitioner has responded to the Report and Recommendation, claiming the magistrate judge erred in failing to consider exhibits attached to the petition filed in Hemphill v. Jones, No. CIV-09-475-HE (W.D.Okla. 2009). He claims those exhibits include pertinent documents, including a motion for extension of time that the Oklahoma Court of Criminal Appeals did not address, which verify "his filing of a 'timely-judicial review.'" Plaintiff's objection, p. 3. The court has reviewed the exhibits filed in Case No. CIV-09-0475-HE and did not find a motion filed by the petitioner requesting an extension or any other pleadings

that would affect the magistrate judge's findings and conclusions.

Contrary to his assertion, the petitioner has not demonstrated cause and prejudice or the fundamental miscarriage of justice needed to excuse the procedural default. He also waived his argument that he was denied access to the courts by failing to present it to the magistrate judge.<sup>1</sup>

The court has conducted a *de novo* review and concurs with the magistrate judge's analysis. Accordingly, the court adopts Magistrate Judge Bacharach's Report and Recommendation, grants the respondent's motion and dismisses the habeas claims arising out of the disciplinary conviction and **DENIES** habeas relief on the petitioner's claims based on the state appellate court's decision.

**IT IS SO ORDERED.**

Dated this 15th day of December, 2009.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>*The petitioner's other arguments, including his contention that the respondent's motion to dismiss and entry of appearance were untimely, lack merit.*